



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1995

Mr. James T. Russell
Administrative Assistant
27th Judicial District of Texas
P.O. Box 540
Belton, Texas 76513

OR95-1305

Dear Mr. Russell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36482.

The District Attorney for the 27th Judicial District of Texas (the "district attorney") received a request for information held by the Bell County Sheriff's Office. Although you do not object to releasing front page offense report information with the victim's identity redacted, you contend that the remaining information may be excepted from required public disclosure under sections 552.101, 552.103, and 552.111 of the Government Code. You claim that the victim's identity is excepted from required public disclosure under section 552.101 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a); the requested records may, therefore, be withheld.¹

¹In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

However, certain factual information generally found on the front page of police offense reports is public information. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public). Section 552.103 generally may not be invoked to except front page offense report information once the offender has been indicted or otherwise notified of the nature of the charges against him, even where it is relevant to pending litigation. Open Records Decision No. 597 (1991). Moreover, the location of the information is not determinative of whether it is public. The district attorney must release the *type* of information deemed public by the *Houston Chronicle Publishing Co.* case regardless of its location in an investigation file. As we have determined that you may not withhold the information deemed public by the *Houston Chronicle Publishing Co.* case, we will address the applicability of section 552.101 of the Government Code to the victim's identity.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information...is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

The requested information relates to a criminal investigation of an alleged aggravated robbery and aggravated sexual assault. This office has determined that common-law privacy permits the withholding of the name of every victim of a serious sexual offense. Open Records Decision No. 339 (1982). Accordingly, you must withhold the victim's identity.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/LBC/ch

Ref: ID# 36482

Enclosures: Submitted documents

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(w/o enclosures)